

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

MARKOS N. PAPPAS,)
)
Plaintiff,)
)
vs.) Case No. CIV-12-0753-F
)
UNITED STATES OF AMERICA,)
)
Defendant.)

AMENDED ORDER

Upon review, the court notes that its order at doc. no. 11 is not accurate in certain respects.¹ To avoid confusion, the order at doc. no. 11 is **VACATED** and this amended order is substituted, giving plaintiff additional time to submit the required partial filing fee.

Plaintiff, Markos N. Pappas, has filed an objection to the Report and Recommendation of Magistrate Judge Gary M. Purcell. Report at doc. no. 9, objection at doc. no. 10. The court has reviewed all objected to matters *de novo*.

Mr. Pappas does not object to the requirement that he pay the filing fee in partial payments pursuant to his *in forma pauperis* status. Nor does he object to dismissal in the event that the filing fee remains unpaid in part or in full. Rather, in his objection, Mr. Pappas states that he never received an order directing the agency having custody of the plaintiff to collect and forward monthly payments to the clerk of this court until the filing fee is paid in full. He states that this may be due to the

¹The order incorrectly refers to the denial of *in forma pauperis* status, which is incorrect, as plaintiff was granted *in forma pauperis* status. Doc. no. 7.

fact that he was transferred from one institution to another about the time that the payment was due. Plaintiff now requests such an order.

The Report's recommendation that this action be dismissed in the event that the filing fee remains unpaid is affirmed, and the Report is **ACCEPTED, ADOPTED** and **AFFIRMED** to that limited extent. The Report's recommendation is **MODIFIED**, however, with respect to the date for payment of the initial partial payment. The due date for the initial partial payment of \$38.83, which represented 20 percent of the average monthly deposits in plaintiff's prison accounts for the six-month period immediately preceding the filing of the complaint, is **DUE** within thirty days of the date of this amended order. If the initial partial payment is not received by that date, or if another extension is not granted, this action will then be dismissed without prejudice for failure to pay the initial portion of the filing fee. As stated in the Reports at doc. nos. 9 and 7, after the payment of the initial partial payment, plaintiff is required to make monthly payments of 20 percent of the preceding month's income credited to his prison accounts until the full \$350.00 filing fee is paid.

Accordingly, plaintiff's objection to the Report is **GRANTED IN PART**. Doc. no. 10. The objection is **GRANTED** to the extent that plaintiff requests a court order to present to prison officials to secure the payments from his account. This order shall serve as the requested order to prison officials. The objection is also **GRANTED** to the extent that plaintiff implicitly requests additional time to submit the initial partial payment.

To expedite payment of the fee, plaintiff may give a copy of this amended order, along with copies of the magistrate judge's orders at doc. nos. 7 and 9, to the responsible official(s) at his institution, who are hereby ordered to remit the initial partial payment of \$38.83, and the monthly payments thereafter. To that end, the Deputy Clerk is **DIRECTED** to mail, along with plaintiff's personal copy of this

amended order, two extra copies of this amended order and of the orders at doc. nos. 7 and 9, so that plaintiff may conveniently provide a copy of all pertinent orders to the individuals at his institution who are responsible for prompt remission of the initial payment and the continuing monthly payments until the \$350.00 fee is paid in full. A copy of this amended order along with doc. nos. 7 and 9, will also be mailed by the Deputy Clerk to the Warden, White Deer - USP Allenwood, P.O. Box 3000, White Deer, PA, 17887, the custodial address on file for the plaintiff.

Plaintiff is cautioned that absent timely payment of the initial partial fee within thirty days, and absent another extension of time, this action will be dismissed without prejudice consistent with the Report and Recommendation of the magistrate judge.

Dated this 2nd day of November, 2012.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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